

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

**RH- 01013503
March 29, 2002**

SUBJECT OF HEARING:

A hearing will be held regarding the adoption of proposed regulations implementing, interpreting, and making specific provisions of Insurance Code Section 758.

AUTHORITY AND REFERENCE:

The Insurance Commissioner proposes to adopt specified portions of the subject regulations under the authority of Insurance Code Sections 758, 12921, and 12926. The Commissioner's decision on the adoption of the regulations will implement, interpret and make specific provisions of Insurance Code Section 758.

HEARING DATE AND LOCATION:

Notice is hereby given that public hearings will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to these regulations as follows:

Date and time:	May 15, 2002 9:30 am*
Location:	Department of Insurance Hearing Room 45 Fremont Street, 22nd Floor San Francisco, CA 94105
Date and time:	May 17, 2002 9:30 am*
Location:	Ronald Reagan State Office Building 300 South Spring Street Ground Floor Hearing Room Los Angeles, California 90013

*These hearings will continue on the dates noted until all testimony has been completed or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS:

All persons are invited to present oral and/or written comments at the scheduled public hearings. Written

comments not presented at the scheduled public hearings should be addressed to the following contact person:

Teresa R. Campbell, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538-4126

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Tony Cignera, Division Chief, Consumer Services Division
California Department of Insurance
300 South Spring Street, 14th floor
Los Angeles, CA 90013
Telephone: (213) 346-6360

DEADLINE FOR WRITTEN COMMENTS:

All written materials, unless submitted at the hearings, must be received by the Insurance Commissioner, c/o the contact person at the address listed above, no later than **4:30 p.m. on May 17, 2002**. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE:

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: campbellt@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are sent to the contact person listed above at the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above.**

ACCESS TO HEARING ROOMS:

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed below) for these hearings in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES:

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Subchapter 4.5, Title 10, of the California Code of Regulations, in connection with their participation in this matter. Interested

persons should contact the Office of the Public Advisor at the following address, in order to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing, listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST:

SUMMARY OF EXISTING REGULATIONS AND POLICY STATEMENT OVERVIEW:

Ins. Code section 758 makes it unlawful for an insurer to require an auto body shop to pay for the cost of an insured's rental vehicle charges or towing charges as a condition of participation in the insurer's direct repair program. However, the statute allows such charges if the insurer and the auto body shop agree in writing to terms that cover the charges when the auto body shop fails to complete the repairs within the agreed upon time. Ins. Code section 758 further provides that an auto body repair shop that is denied participation in an insurer's direct repair program may report that denial to the Department of Insurance, who shall maintain a record of the denials for the purpose of gathering market conduct information. Additionally, if asked by the Department of Insurance, an insurer must disclose that a denial was made.

The same statute requires any insurer that conducts an auto body repair labor rate survey to determine and set a specified prevailing rate in a specific geographic area to report the results of the survey to the Department of Insurance. The Department of Insurance is required to make the information available upon request.

The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is set forth below.

The Commissioner has determined that the adoption of regulations is necessary in order to effectively administer Insurance Code Section 758. The regulations would do the following:

- 1) Define "Direct Repair Program" and specify where auto body repair shops denied participation in insurers' direct repair programs can report such denials.
- 2) Define "labor rate survey" and "prevailing auto body rate."
- 3) Outline what information must be included in labor rate survey results reported to the

- Department of Insurance and where those results should be sent.
- 4) Clarify how to request labor rate survey results submitted to the Department of Insurance.

EFFECT OF PROPOSED ACTION:

The major effects of the regulations are as follows:

Proposed section 2698.90 (a)

The term “Direct Repair Program” as used in Ins Code section 758 is unclear. Insurers use several names to identify their specific programs. The statute refers to a general category of programs, rather than the name of a specific program. The regulation defines “Direct Repair Program.”

Proposed section 2698.90(b)

Ins. Code section 758(b) is unclear as to where an auto body repair facility reporting a denial to participate in an insurer’s direct repair program should report that denial. The regulation directs the auto body repair facility to report the denial to the Market Conduct Division/Fair Claims Bureau of the Department of Insurance.

Proposed section 2698.91(a)

The term “labor rate survey” as used in Ins. Code section 758(c) is unclear. The regulation defines “labor rate survey.”

Proposed section 2698.91(b)

The term “prevailing auto body rate” as employed in Ins. Code section 758(c) is unclear. The regulation defines “prevailing labor rate.”

Proposed section 2698.91(c)

Ins. Code section 758(c) requires an insurer to report the results of any labor rate survey it conducts to the department and provides that the name and address of the shops surveyed and the total number of shops surveyed must be listed. However, the language of the statute implies that additional information may be reported. The regulation requires the insurer to also provide a description of what geographic areas were surveyed, a description of the methodology used by the insurer to reach the prevailing rate, and the prevailing rate established for each geographic area surveyed. This information provides a context for the information specifically outlined in the statute.

This section also requires that any confidential information not required by the statute or regulation be removed from the labor rate survey before it is submitted to Department of Insurance.

Proposed section 2698.91(d)

It is unclear from § 758(c) specifically where insurers should submit the results of a labor rate survey. The regulation directs the insurer to send the labor rate survey results to the Market Conduct Division of the Department of Insurance.

Proposed section 2698.91(e)

The statute does not state where requests for the labor rate survey results should be directed. The regulation direct all request for labor rate surveys to the Custodian of Record of the Department of Insurance pursuant to he Public Records Act.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS:

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN
FEDERAL FUNDING:

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA
BUSINESSES TO COMPETE:

The Commissioner has made an initial determination that the proposed regulations do not have a significant, statewide adverse economic impact directly affecting business or the ability of California businesses to compete with businesses in other states.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES:

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FINDING OF NECESSITY:

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA:

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS:

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES:

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS:

The Commissioner has determined that the proposed regulations do not significantly affect small businesses in that the regulations pertain primarily to insurers and do not require any significant action on the part of any auto body shop or other small business.

COMPARABLE FEDERAL LAW:

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS:

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed adoption of the regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including

any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING:

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS:

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find near the top of the page the major heading 'Protecting Consumers.' In this section, scroll down until you see the subheading 'BE INFORMED.' Click on the nearby 'Search for Proposed Regulations' link. When the search field appears, enter 'RH01013503' (the Department's regulation file number for these regulations). Alternatively, search for the California Insurance Code number of a code section that the regulations implement (for instance, "758"), or search by key word ('direct repair,' for example, or 'labor rate'). Then, click on the "Submit" button to display links to the various filing documents.

To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Direct Repair Programs and Labor Rate Surveys" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE:

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated: March 29, 2002

HARRY W. LOW
Insurance Commissioner

By _____/s/
Patricia K. Staggs
Deputy Commissioner

